IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/06/2004

Coram

THE HON'BLE MR. JUSTICE M.KARPAGAVINAYAGAM
And
THE HON'BLE MR. JUSTICE S.K.KRISHNAN

CRIMINAL APPEAL No.234 of 1996

1. Nagarathinam
2. Sankar
3. Tirunavukkarasu
4. Srinivasan @ Kutty
5. Gnanasekaran
6. Ganesan .. Appellants

-Vs-

State rep. by Inspector of Police,
Salavakkam. ..Respondent

Criminal Appeal against the judgment dated 29.2.1996 in S.C.No.33 of 1993 on the file of the Principal Sessions Judge, Chengleput.

!For Appellants: Mr.V. Gopinath, S.C. for
Mr.K. Selvarangan

^For Respondent: Mr.E.Raja,
Addl. Public Prosecutor.

:JUDGMENT

M. KARPAGAVINAYAGAM, J.

This is a case of double murder.

2. The appellants are A1 to A6. A1 and A2 have been convicted for the offences under Section 302 read with 34 I.P.C. in respect of the first deceased Shanmugam. A1 and A3 have been convicted for the offences under Section 302 read with 34 I.P.C. in respect of the second deceased Krishnan. A1, A3, A5 and A6 have been convicted for the offence under Section 147 I.P.C. and A2 and A3 have been convicted for the offence under Section 148 I.P.C. A3 to A6 have been convicted for the offence under Section 302 read with 149

I.P.C. in respect of the first deceased. A2, A4, A5 and A6 have been convicted for the offence under Section 302 read with 149 I.P.C. in respect of the second deceased. A1 to A6 have been convicted for the offence under Section 324 I.P.C. Challenging the above conviction, this appeal has been filed.

3. The case of the prosecution in brief is as follows:
"(a) First appellant (A1) Nagarathinam is the father. Second appellant (A2) Sankar and third appellant (A3) Thirunavukkarasu are his sons. The appellants 4 to 6 (A4 to A6) by name Srinivasan alias Kutty, Gnanasekaran and Ganesan are their relatives. First deceased Shanmugam and second deceased Krishnan are the brothers. Their paternal uncle Rajendran is the Panchayat Board President of Maiyoor village.

(b) A1 Nagarathinam and other accused constructed a brick-kiln in the land belonging to the Gangaiamman temple and indulged themselves in the business of sale of bricks. The villagers opposed the same. They reported the matter to Rajendran, Panchayat Board President. Then, Rajendran enquired about the complaint against A1. A1 did not make proper reply. Therefore, he lodged a report with B.D.O.(P.W.8). After conducting enquiry, the B.D.O. imposed fine of Rs.25,000/-. However, the fine was not paid. So, the Panchayat Board President filed a civil suit and obtained a decree against the first accused.

(c) The villagers collected Rs.12,000/- for temple festival and entrusted the same for safe custody to A1. No proper accounts were maintained by him. Therefore, in order to get back the amount from him, the Panchayat Board President Rajendran convened a meeting on 22.7.1990 at about 5.00 p.m. to take further action against A1.
(d) Having felt insulted and aggrieved over the convening of the meeting, all the accused formed themselves into unlawful assembly and gathered in front of Vedachalam Tea Shop on the same day at 3.00 p.m. and challenged the authority of Rajendran to convene the meeting and abused other villagers.

(e) Shanmugam, the first deceased, who is the nephew of Rajendran was present at that time near the tea shop. He questioned A1 as to why he had to abuse Rajendran and if any grievance he had, he could express the same in the meeting to be held at 5.00 p.m.

(f) Getting enraged over the words uttered by the first deceased Shanmugam, A1 Nagarathinam came near the first deceased and caught hold of him by his hands from back side and asked the other accused to finish him once for all. Then, A2 Sankar took out a knife (M.O.6) kept in the tea stall and gave a stab on his stomach. The first deceased with bleeding injury on the stomach fell down and became unconscious. At that time, the second deceased Krishnan came that side after finishing his agricultural work in the field along with his bull. On noticing this incident, the second deceased came near the first accused and cried. When he tried to lift the first deceased, A1 with M.O.1 Thadi beat on the head of the second deceased. A3 Thirunavukkarasu with

another Thadi M.O.2 beat on his shoulder. The second deceased also fell down.

(g) P.W.1 Gajendran, P.W.2 Elumalai, P.W.3 Paramasivam and P.W.10 Chandran were sitting near the tea stall opposite to the bus stop. When D1 and D2 fell down, they went near them in order to lift them. The accused threatened them. One Mohan who came along with the other accused, beat P.W.1 with M.O.1 Thadi. A4 Srinivasan with a knife (M.O.7) stabbed on P.W.3 Paramasivam on his back. When P.W.2 Elumalai came near him, he attacked him also and caused injury on the right hand fingers. P.W.10 also was attacked causing cut injury on his head by A4 .

(h) At that juncture, all the four, namely P.W.1, P.W.2, P.W.3 and P.W.10 took stones and Thadi and threw them at the accused. All the accused fled away from the scene. Then, all of them took the deceased 1 and 2 in a town bus to Chengleput Government Hospital. On the way, first deceased Shanmugam died. All the others were admitted in the hospital.

(i) At 4.15 p.m., P.W.5 Doctor examined the second deceased and issued Ex.P2 Accident Register. He found the first deceased dead and issued Ex.P3 Accident Register. At 4.30 p.m., he examined P.W.3 Paramasivam and issued Ex.P4 Accident Register. Then, he examined P.W.10 Chandran and issued Ex.P5 Accident Register. At 4.45 p.m., he examined P.W.2 Elumalai and issued Ex.P6 Accident Register.

(j) Even before their admission, the accused 1 to 3 came to the hospital and got themselves admitted. P.W.6 Doctor examined them and issued Exs.P7, P8 and P9, the Accident Registers to A1 to A3 respectively.

(k) In the meantime, P.W.1 went to the police station at about 8.00 p.m. P.W.16 Sub Inspector of Police received the complaint Ex.P1 from him and registered the case in Crime No.218/90 for the offences under Sections 147, 148, 323 and 302 I.P.C. The F.I.R. is Ex.P26. He then sent message to the Court as well as to the higher officials. Thereupon, he went to the hospital and examined the injured witnesses. He noticed that A1 to A3 were admitted in the hospital. He obtained counter complaint at about 11.00 p.m. from A1 and the same was registered in Crime No.219/90 for the offences under Sections 147, 148 and 324 I.P.C. against Shanmugam, Krishnan, Elumalai, Paramasivam, Chandran and Gajendran. These accused in Crime No.219/90 are the deceased and witnesses in Crime No.218/90. The counter complaint is Ex.P27 and the F.I.R. is Ex.P28.

(l) On receipt of the message, P.W.17 Inspector of Police took up investigation and came to the spot. Next day morning, he prepared observation mahazar and rough sketch and recovered the bloodstained earth and sample earth. Thereafter, he went to the hospital and examined P.W.1, P.W.2, P.W.3, P.W.9 and P.W.10. He conducted inquest and prepared inquest reports Exs.P32 and P33 in respect of the deceased 1 and 2 respectively.

(m) On 23.7.1990, the dead bodies were handed over to the hospital. P.W.6 Doctor conducted post-mortem on both the deceased. The postmortem certificate in respect of the first deceased is Ex.P10 and the post-mortem

certificate in respect of the second deceased is Ex.P11. He found 8 external injuries on the first deceased and one external injury on the second deceased. According to him, the first deceased died due to the stab injuries and the second deceased died due to the head injury.

(n) P.W.17 Inspector of Police continued the investigation and examined other witnesses. He recovered the records from the Panchayat Board Office in order to show that the amounts collected from the villagers for the temple festival were entrusted to A1 in his capacity as cashier. The materials were sent for analysis. After finishing the investigation, charge sheet was filed for the offences under Sections 14 7, 148, 341, 302 and 307 read with 149 I.P.C."

4. During the course of trial, on the side of the prosecution, P.W.1 to P.W.18 were examined, Exs.P1 to P36 were filed and M.Os.1 to 2 2 were marked.

5. When the accused were questioned under Section 313 Cr.P.C., they denied their complicity in the crime.

6. On conclusion of trial, the accused were convicted as referred to above. Hence, this appeal by all the accused.

7. Mr.V.Gopinath, the learned senior counsel appearing for the appellants would take us through the entire evidence and while assailing the judgment of conviction by the trial Court, would make the following contentions:

(1) The motive projected by the prosecution has not been clearly established. Though P.W.8, the B.D.O. has been examined, no document has been produced to show that the fine amount was imposed upon A1 on the complaint of Rajendran, the Panchayat Board President. There are no materials to show that the amount collected from public was entrusted to A1, who failed to account for the same. M.O.12, the Ledger Book does not indicate that the amount has been entrusted to A1. The evidence of P.W.15 also would not be sufficient to hold that the motive has been proved.

(2) Even according to the prosecution, there is enmity between the Panchayat Board President Rajendran and A1. Admittedly, P.W.1, P.W.2, P.W.3, P.W.9 and P.W.10 are the close relatives of the said Rajendran. Even though P.W.1 sustained injury, he did not choose to take treatment in the hospital. P.W.1 stated that he came to the police station at about 8.00 p.m. and gave a complaint. Even though the other witnesses deny the presence of Rajendran, P.W.9 would admit that Rajendran came to the hospital at 7.00 p.m. Admittedly, the complaint has been given only at 8.00 p.m. Therefore, the complaint must have been lodged in the name of P.W.1 only at the instance of Rajendran giving false particulars about the accused. As such, the evidence of eye witnesses, namely P.W.1, P.W.2, P.W.3, P.W.9 and P.W.10, who are the interested witnesses, cannot be given due credence. Further, neither P.W.9's name has been mentioned in Ex.P1 nor his presence has been spoken to by other witnesses.

(3) There are serious injuries on the vital parts of A1, A2 and A3. Though there is an attempt by P.W.1 to give explanation in Ex.P1, he would admit that he saw A1 to A3 in the hospital even before he gave the complaint. Therefore, he had to give some explanation. According to other witnesses, after the occurrence was over, they took stones and Thadi and threw them at A1 to A3, as a result of which, they sustained injuries. These serious incised injuries on the accused could not have been caused by stones and Thadi. As such, their explanation is false. Further, the counter complaint Ex.P27 was received by P.W.1 6 Sub Inspector of Police. In the F.I.R. Ex.P28, names of D1, D2, P. W.1, P.W.2, P.W.3 and P.W.10 were mentioned as accused. But, this complaint was not properly investigated either by P.W.16 or by P.W.17. If the proper investigation had been done in that case, the investigating officer would have found out that the injuries on the deceased and witnesses were caused by the accused only as self-defence.

(4) The place of occurrence has not been established. According to P.W.1, P.W.2, P.W.3, P.W.4. P.W.9 and P.W.10, the occurrence had taken place near the tea shop. But, Ex.P29 observation mahazar and Ex.P30 rough sketch and the evidence of P.W.17 would clearly show that the occurrence took place near the bus stand. There is no explanation by the prosecution with reference to this discrepancy.

(5) Exs.P32 and P33, the inquest reports would refer to the free fight between both the groups. In such a context, the plea of selfdefence has to be given due importance. When there are sufficient materials to show that both the parties sustained injuries in the free fight, the trial Court cannot accept the testimony of the eye witnesses blindly and discard the plea of self-defence.

8. The learned senior counsel would cite the following authorities:
1) LAKSHMI SINGH v. STATE OF BIHAR (1976 Crl.L.J.1736);
2) STATE OF U.P. v. MADAN MOHAN (1989 Crl.L.J.1485);
3) RAM MILAN v. STATE OF U.P. (1992 Crl.L.J.2537);
4) RAM MILAN v. STATE OF U.P. (1993 S.C.C.(Cri)348);
5) RAM PHAL v. STATE OF HARYANA (1993 Crl.L.J.2603);
6) SUBRAMANI v. STATE OF T.N.(2002 S.C.C.(Cri) 1659).
9. The learned Additional Public Prosecutor would point out various portions of the evidence and contend that the evidence of the injured eye witnesses, viz., P.W.1, P.W.2, P.W.3 and P.W.10 is consistent and is sufficiently corroborated by the other evidence including the medical evidence and sufficient explanation has been given for the injuries sustained by the accused and as such, the conviction is legal. He would cite the following decisions:
1)KASHIRAM v. STATE OF M.P. (2002 S.C.C.(Cri) 68);
2)RAM AVTAR v. STATE OF U.P. (2003 S.C.C.(Cri) 1404);
3)JAMES MARTIN v. STATE OF KERALA(2004 S.C.C.(Cri)487);
4)RAM BALI v. STATE OF U.P. (2004(3) S.C.C.(Cri)547).

10. We have carefully considered the submissions made by the counsel for the parties and also gone through the entire records.

11. According to the prosecution, A1 constructed a brick-kiln in the land belonging to the village temple and sold the bricks, thereby doing business and this was objected to by the villagers and when the Panchayat Board President Rajendran questioned A1, he did not respond to the same and therefore, a report was lodged with the Revenue Department by the said Rajendran and the Revenue Department imposed fine and as the fine was not paid by A1, Rajendran filed a suit and obtained decree and for conducting temple festival, amount was collected from the villagers and entrusted to A1 and since the account was not properly maintained by him, Rajendran convened the village meeting to be held on 22.7.1990 at about 5.00 p.m. Being aggrieved over this, A1 and his relatives A2 to A6 and another came to the tea shop of P.W.4 Vedachalam with weapons at about 3.00 p.m. and began to make comments abusing Rajendran and when this was questioned by Shanmugam, the nephew of the said Rajendran, A1 caught hold of him and A2 stabbed on his stomach with a knife and when his brother Krishnan came to the rescue of Shanmugam, Krishnan also was attacked by both A1 and A3 and while the witnesses P.W.1 Gajendran, P.W.2 Elumalai, P.W.3 Paramasivam and P.W.10 Chandran intervened, they were also attacked by A4 to A6 with weapons and when the accused threatened the witnesses, the witnesses took stones and Thadi and threw at the accused, thereby A1 to A3 sustained injuries and ran away from the scene. Immediately thereafter, they were taken to hospital and on the way to the hospital, Shanmugam died and Krishnan while taking treatment died and other witnesses were examined by the Doctor. On the complaint given by P.W.1, P.W.16 Sub Inspector of Police came to the hospital and on seeing that A1 to A3 were also admitted in the hospital, he received a counter complaint from A1 and a case was registered against the deceased and witnesses in this case. P.W.17 Inspector of Police took up investigation, arrested the accused, recovered the materials and examined the witnesses and P.W.18, another Inspector of Police took up further investigation and filed the charge sheet.

12. To establish motive, P.W.8, P.W.12, P.W.13 and P.W.15 were examined and through them, M.Os.8 to 12 were marked. To speak about the main occurrence, P.W.1, P.W.2, P.W.3 and P.W.10, the injured witnesses and P.W.9 another eye witness were examined and to prove the injuries sustained by the deceased and others, the Doctors P.W.5 to P.W.7 were examined and Exs.P2 to P11 were marked. The registration of the complaint, recovery of the articles and the investigation have been spoken to by P.W.16 Sub Inspector of Police and P.W.17 Inspector of Police.

13. As stated above, the motive is that the accused constructed a brick-kiln illegally in the temple land and misappropriated the amount entrusted by the villagers and to question that, a meeting was arranged to be held on 22.7.1990 at about 5.00 p.m. In that context, the occurrence had taken place on 22.7.1990 at about 3.00 p.m.

14. The learned senior counsel would submit that there are no sufficient materials to show that fine was imposed on the first accused by the Revenue Department for having committed illegal activities and the village common fund was collected and entrusted to the first accused and since proper account was not maintained, the village people got aggrieved against the first accused.

15. The perusal of the evidence of P.W.1 Gajendran, P.W.2 Elumalai, P.W.3 Paramasivam and P.W.10 Chandran would show that the Panchayat Board

President Rajendran questioned A1 on the complaint of the villagers regarding the construction of the brick-kiln in the temple land and the B.D.O. also conducted enquiry and fine was imposed and the Civil Court also passed a decree against A1. The amount of Rs.12,000/- entrusted to the first accused for conducting temple festival has not been accounted for. On going through the entire cross-examination, it is clear that there is no challenge made to this aspect of the evidence adduced by these witnesses.

16. As a matter of fact, P.W.8 Lakshmi Narayan who was B.D.O. then, was examined to speak to this effect. He stated in the deposition that he received a complaint from the Panchayat Board President Rajendran against A1 and A2 for having illegally acquired the land for constructing brick-kiln without permission and an enquiry was conducted against A1 and finally order was passed. In the cross-examination, there is no challenge to this evidence. On the other hand, a suggestion was made to him that the Department concerned would use to pass any orders without conducting any enquiry on the mere complaint given by the Panchayat Board President.

17. P.W.12 Palani would speak about the recovery of the records from the said Rajendran by P.W.17, the Inspector of Police. M.O.8 is the xerox copy of the order passed by the Commissioner of Panchayat Union with regard to this. The original order is M.O.9. The interim order passed in the Civil

Court is M.O.10. Ultimately, the decree that was passed by the Court against the accused in the suit filed by Rajendran is M.O.11. These records have been recovered by the police under mahazar Ex.P14 and this was attested by P.W.12.

18. Similarly, P.W.12 would also refer to M.O.12, the Account Register maintained by the Panchayat, which was recovered from the office under Ex.P15. This account was written by P.W.15 Venkatesan. According to him, the Association was set up by the Village Panchayat and in that Panchayat, Rajendran was the President and A1 Nagarathinam was the Treasurer. As per the Register, on 17.7.1989, the meeting was held attended by both President Rajendran and the Treasurer A1 and in that meeting, the committee members (bgUe;jdf;fhuh;) were selected. The entries dated 7.8.1989 would indicate that another meeting was held on that day attended by the President Rajendran, Treasurer Nagarathinam (A1) and others and the fund Rs.5,073.20 collected from the villagers for conducting festival of Mariamman temple was entrusted to A1 Nagarathinam. Nagarathinam also signed in that Register. Page No.27 of the Register contains the other amounts collected which were added with Rs.5,073/- and the total amount which was entrusted to A1 Nagarathinam was Rs.9,593.15. These things have been written by P.W.15. This evidence of P.W.15 has not been challenged.

19. As a matter of fact, the records would show that A1 was entrusted with money collected from the village people and as Treasurer, he has signed in the Register. About this document, P.W.13 Venu Naicker, one of the bgUe;jdf;fhuh;, who had signed in the Register also, would state referring to the relevant page in M.O.12 about the entrustment of the amount to the first accused and in the Register, the first accused had signed as a Cashier. This

evidence also has not been challenged.

20. When these materials are available, which have not been seriously challenged, it cannot be contended that there is no sufficient evidence to show that the accused had no motive against Rajendran who is the Panchayat President.

21. In the light of those materials, it has to be held that the accused did not like the convening of the meeting to be held at 5.00 p.m. on 22.7.1990 and on getting insulted due to this, the accused persons along with others came to a tea stall near public road ad began to use abusive words against Rajendran by challenging his authority.

22. Let us now come to the main occurrence.

23. The main occurrence has been spoken to by P.W.1, P.W.2, P.W.3 and P.W.10. Admittedly, the presence of P.W.9 has not been mentioned in Ex.P1, the complaint nor spoken to by the other witnesses. Therefore, we need not give much weight to the evidence of P.W.9. But, the evidence of P.W.1, P.W.2, P.W.3 and P.W.10 would assume importance, since they are injured witnesses. According to them, when the accused and other persons came near the tea stall and began to abuse Rajendran, his relative, the first deceased Shanmugam questioned them and at that time, the accused attacked both Shanmugam and his brother Krishnan and caused injuries. Thereafter, these witnesses also were attacked by the accused.

24. It is strenuously contended by the learned senior counsel appearing for the appellants/accused that P.W.1, P.W.2, P.W.3 and P.W.10 are the close relatives of Rajendran who was admittedly inimical towards the accused. Even though the occurrence had taken place at 3.00 p. m., P.W.1 gave the complaint at 8.00 p.m. and the presence of Rajendran at 7.00 p.m. in the hospital has been admitted by P.W.9 and therefore, the complaint must have been given only at his instance and as such, their evidence has to be discarded.

25. Even at the threshold, it is to be made clear that all these witnesses and the accused persons belong to one caste and they are residing in the same village. Though the witnesses P.Ws.1,2,3 and 10 would admit that they are related to the said Rajendran, they have specifically stated in the cross-examination that they belong to neither this group nor the other group and both the groups are friends to them. According to the witnesses, when they went near to Shanmugam and Krishnan, the deceased who fell down, in order to lift them, they were attacked by the accused.

26. It has to be noticed in this context that the occurrence had taken place in a day light at about 3.00 p.m. and two persons sustained very serious injuries and on the injuries being inflicted, both the deceased fell down and became unconscious. All the four injured persons took immediate steps to take both the deceased who were in serious condition to the hospital. Though Shanmugam died on the way to the hospital, both of them were taken to the hospital where P.W.5 Doctor declared Shanmugam died and issued the

Accident Register Ex.P3 after noting the serious injuries on the stoma ch from where the intestines came out. He also examined Krishnan and found two injuries on the head and right wrist. Then, he examined P.W.3 Paramasivam and found injuries on the back and head and admitted him in the hospital as inpatient and issued Ex.P4. He also examined P.W.10 Chandran and found injuries on head and gave treatment and treated him as out-patient and issued Ex.P5. On the same day, he gave treatment to P.W.2 Elumalai and found injuries on his left hand finger, left fore-arm and right head and issued Ex.P6.

27. P.W.1 who accompanied the deceased as well as the injured witnesses to the hospital left the hospital immediately after their admission for police station to give a complaint. Accordingly, P.W.1 came to the Salavakkam Police Station and gave complaint at about 8.00 p.m. P.W.16 received the complaint Ex.P1 and registered the case in Crime No.218/90 for the offences under Sections 147, 148, 323 and 302 I.P.C. Ex.P26 is the F.I.R. At that stage, only one person, viz., Shanmugam died and Krishnan was alive. Thereafter, P.W.16 rushed to the hospital and found some of the injured witnesses were admitted in the hospital and the accused 1 to 3 also got admitted in the hospital. He examined A1 who gave a counter complaint Ex.P27 which was recorded by him and came to the police station at about 11.00 p.m. and registered a case in Crime No.219/90 for the offences under Sections 147, 148 and 324 I.P.C. He prepared F.I.R. Ex.P28 and sent the same to the court as well as to the higher officials.

28. The learned senior counsel for the appellants would contend that though the witnesses would speak about only one injury on the first deceased Shanmugam, the post-mortem certificate Ex.P10 issued by P.W.6 Doctor would show that there are 8 external injuries.

29. According to the prosecution, A1 caught hold of the first deceased Shanmugam by standing from behind, A2 with M.O.6 knife stabbed on the stomach. Though there are 8 external injuries, the injuries 1 to 7 are abrasions found on the right arm, left arm, ring finger and right thigh. 8th injury only is the incised wound which was found obliquely over the right abdomen with a spiking directed downwards. P.W.6 , the post-mortem Doctor would opine that though the injuries 1 to 7 could be caused by a fall, 8th injury which is fatal could be caused by knife life M.O.6 or M.O.7. P.W.1 would state in the crossexamination that the first deceased on receipt of injury on the stomach, fell down on the Jalli stones spread in the Tar road. He has stated as follows:

"jhh; nuhoy; ,Ue;j $y;yp nky; tpGe;J tpl;lhd;/@

Therefore, it can be easily concluded that these injuries could have been caused by a fall as opined by the Doctor.

30. Similarly, yet another argument has been advanced by the learned senior counsel for the appellants that there is only one injury found on the second deceased whereas the prosecution case is both A1 and A3 attacked with Thadi.

31. It is true that P.W.6, the post-mortem Doctor found one injury on the head. But, it is noticed that Krishnan, the second deceased was examined by P.W.5 Doctor at about 4.30 p.m. He found two injuries. According to him, one injury was found on head and another contusion was found on the right wrist. In Ex.P2, it has been specifically mentioned that the first injury is cut injury in the left temporal parietal region and the second injury is the contusion on the hand. The mere fact that the post-mortem Doctor did not notice another injury on the hand would not be a ground to discard the evidence of the ocular testimony with reference to the second deceased, especially it has been corroborated by the evidence of P.W.5 Doctor, who attended the deceased immediately after the occurrence.
32. Much was said about the fact that P.W.1 was not treated when he went to the hospital on the same date. According to P.W.1, he went up to the hospital and immediately rushed to the police station. Though P.W.16 would say that he did not find any injury on P.W.1, the fact that he sustained injury at the hands of the accused has been mentioned in Ex.P1 which has been received by P.W.16.
33. It is the case of P.W.1 that he got the treatment from private Doctor on the same day and went to the house at 11.00 p.m. The Doctor P.W.7 who examined P.W.1 on 24.7.1990 with a memo issued by the police, would state that he found wound which++++++++++++++++++++++++++++++++++ had been sutured by
some other Doctor. To this effect, he has given certificate Ex.P13.

34. Therefore, the evidence of P.Ws.1, 2, 3 and 10 coupled with P. Ws.5, 6 and 7, the Doctors who speak about the injuries on the deceased on the basis of Exs.P10 and P11 would clearly show that there is a consistent version with reference to the attack made on the deceased.

35. With reference to the injuries on the witnesses, though there is a charge that all the accused attacked the witnesses, the evidence of these witnesses would show that P.Ws.2, 3 and 4 were attacked by A4 only. Though there is a general statement by P.W.2 that A5 and A6 also attacked, he is not clear that as to who were attacked by them.

36. There is no charge in respect of the injury caused on P.W.1 Gajendran, since the accused Mohan was not alive during the course of trial. But, in regard to the injuries caused on P.W.2 Elumalai, P.W.3 Paramasivam and P.W.10 Chandran, their evidence has been corroborated by the medical testimony by Doctors P.W.5 and P.W.7 through Exs.P4, P5 and P6. In such circumstances, it cannot be concluded that Rajendran was at the background for giving a complaint making false allegations against the accused.

37. As a matter of fact, even in the counter complaint given by A1 which has been registered as Ex.P27, the presence of the injured witnesses as well as the presence of A1 to A3 in the occurrence has been admitted and who admittedly sustained injuries in the occurrence as is evident through Exs.P7, P8 and P9. Hence, the argument on this aspect by the learned senior counsel has to fail.

38. Let us come to the next limb of the argument of the counsel for

the appellants with reference to the non-explanation of the injuries found on the accused.

39. It is strenuously contended that the accused 1 to 3 sustained serious injuries on the vital parts of the body and the had not been explained. According to the counsel for the appellants, the nonexplanation of the injuries would affect the prosecution and as such, the accused are entitled to acquittal. He would cite 1989 Crl.L.J.1485, 2 002 S.C.C.(Cri.) 1659, 1993 S.C.C.(Cri.) 348, 1976 Crl.L.J.1736, 1993 Crl.L.J.2603 and 1992 Crl.L.J.2537.

40. The principles laid down in these cases are as follows:
(A) The prosecution has to come forward with the whole truth. When the explanation has not been given as to how the accused happened to receive injuries by the prosecution, the version given by the defence cannot be rejected.

(B) When the accused persons received fairly number of injuries and some of them were on vital parts, the prosecution has to give a plausible explanation. In the absence of any explanation given by the prosecution naturally an adverse inference has to be drawn.

(C) When there is a defence version which explains the injuries on the person of the accused it is probable so as to throw doubt on the prosecution case. The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.
(D) The omission on the part of the prosecution to explain the injuries on the person of the accused may give rise to the inference that the prosecution is guilty of suppressing the genesis and the origin of the occurrence and thus had not presented the true version.

41. On the basis of the observations made by the Supreme Court, it is strenuously contended that there is no explanation for the injuries caused on A1 to A3 and even the attempt made by the prosecution to explain the injuries has become futile and as such, it has to be held that the explanation is false.

42. There is no dispute on the side of prosecution that the accused 1 to 3 received injuries in the course of same transaction. It is also not disputed that A1 to A3 were examined by P.W.5 Doctor and Exs.P7 , P8 and P9 were issued. Even according to the prosecution, the accused themselves went to the hospital and got themselves admitted at 4.00 p.m. on 22.7.1990. As per Ex.P7, A1 Nagarathinam sustained stab wound on left thigh and left fore arm and incised wound on frontal region. A2 Sankar as per Ex.P8, received cut wound in left knee joint and incised wound on the parietal region. A3 Thirunavukkarasu as per Ex.P9, sustained incised scalp wound in the parietal region. But, Exs.P7, P8 and P9 all would show that the opinion was given by the Chief Medical Officer of Chengleput Hospital to the effect that the injuries are simple.

43. It is not as if there is no explanation for the injuries sustained by the accused. On the other hand, even in Ex.P1, P.W.1 would state that when the accused threatened the witnesses from making an effort to take the deceased to hospital, they took the Kattai, Kambu which were available in the scene and beat the accused who ran away from the scene. This has also been spoken to by P.W.1, P.W.2, P.W.3 and P.W.10, the injured witnesses during the course of deposition. In such a situation, it cannot be contended that there is no explanation.

44. The question is whether those injuries could have been caused by Kattai, Thadi and all as stated by the witnesses. Exs.P7, P8 and P9 would show that A1 to A3 were attacked with knife and bottles. When those were the statements made by these accused persons before the Doctor as mentioned in Exs.P7, P8 and P9, no attempt has been made by the defence to elicit from P.W.5, the Doctor who examined them, that those injuries found on A1 to A3 could not have been caused by Thadi and Kattai. One of the witnesses would state that they also removed Thatti which was found available and threw it at the accused. In such circumstances, the nature of the injuries would depend upon the shape of the weapon used. In the absence of any medical evidence to show that these injuries could not have been caused by Thadi and stone, we are not able to reject the evidence of the injured eye witnesses that those injuries were caused by them by using Thadi and stone for driving them out.

45. Though the injuries are on the vital parts of the body, it cannot be said that they are so serious. As stated above, P.W.5 Doctor stated that as per Exs.P7, P8 and P9 that the injuries are simple. There is no dispute in the fact that they the accused 1 to 3 themselves went to the hospital and got admitted. Though there are incised injuries on the head, thigh and arms, those injuries would not be said to be deep injuries, as the Doctor would not give any measurement with regard to the depth.

46. As the Supreme Court would hold that the plausible explanation on the side of the prosecution with reference to the injuries is enough, the explanation given by P.W.1 even in the first document, namely Ex.P1 would be, in our view, a plausible explanation.

47. In this context, it is worthwhile to refer to the guidelines laid down by the Apex Court in KASHIRAM v. STATE OF M.P.(2002 S.C.C.(Cri)68) and RAM AVTAR v. STATE OF U.P.(2003 S.C.C.(Cri) 1404):
(I) Merely on the ground that the prosecution witnesses have not explained the injuries on the accused, the evidence of prosecution witnesses ought not to be rejected outrightly.
(II) The court ought to make an effort at searching out the truth on the material available on record with a view to find out how much of the prosecution case was proved beyond reasonable doubt and the approach of rejecting the prosecution case in its entirety for nonexplanation of the injuries sustained by the accused persons is erroneous.
(III) It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved.

(IV) When the prosecution evidence is clear, cogent and creditworthy, the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence and consequently the whole case.

48. If we apply the above guidelines to the present facts of the case, it can be safely held that the prosecution case has been proved beyond reasonable doubt by the cogent and clear evidence adduced by the injured witnesses which has been corroborated by the medical evidence and as such, the alleged non-explanation of the injuries would not affect the credit-worthiness of the prosecution. On the other hand, it has to be further held that the explanation offered by the prosecution with reference to the injuries on the accused cannot be said to be improbable as, in our view, the plausible explanation has been given by the prosecution even at the inception of the investigation.

49. Further, it has been elicited in the cross-examination of P.W.1 that there were Jalli stones heaped on the Tar road side opposite to the tea shop. The relevant portion is this:

@eh';fs; mogl;l gpwF fy;Yk; fl;ila[k; vLj;J moj;njhk;/ ////// Of; filf;F vjphpy; jhh; nuhL Xuj;jpy; $y;yp fw;fs; bfhl;o itj;jpUe;jhh;fs;/@
So, the explanation offered by the witnesses stating that the accused sustained injuries by the throw of the stones has been amply established.

50. Let us now deal with the point with reference to the identity of the place of occurrence.

51. It is contended that according to P.W.1, P.W.2, P.W.3 and P.W.10 , the occurrence took place in front of the tea shop of P.W.4, but Ex.P29, the observation mahazar and Ex.P30 rough sketch would show that the bloodstained earth was taken near the bus stop and as such, the place of occurrence has not been clearly established.

52. This submission, in our view, is not tenable. The perusal of Ex.P29 observation mahazar and a look at Ex.P30 rough sketch in the light of the evidence of P.Ws.1,2,3 and 10 would clearly indicate that the tea shop of P.W.4 Vedachalam is situated just opposite to the bus stop. Ex.P30 would show that the bus stop is situated in the northern side and in the southern side, across the road, the tea shop of P. W.4 is situated. Further, the accused themselves admitted through Ex. P27, their counter complaint and Ex.P28, the F.I.R. that the occurrence had taken place in between the tea shop and the bus stop and during the course of the said occurrence, both the accused as

well as the prosecution witnesses and the deceased had sustained injuries. In such a situation, it cannot be contended that the place of occurrence has not been established.

53. Nextly, the learned senior counsel appearing for the appellants would contend that the plea of private defence projected by the defence has

not been given due consideration by the trial Court and as such, the defence version stating that they attacked the deceased and witnesses by way of exercising their private defence after they were attacked by the prosecution party, is more probable than the prosecution version.

54. The right of private defence is a recognised right in the criminal law. Section 96 I.P.C. provides that nothing is an offence which is done in the exercise of the right of private defence. So, whenever the question arises where the exercise of such right is claimed, it is to be considered whether the "Lakshman Rekha", applicable to its exercise has been exceeded. Section 99 I.P.C. delineates the extent to which the right may be exercised.

55. While dealing with Sections 96 and 96 of I.P.C. and Section 105 of the Evidence Act, some principles have been given for appreciation of the said question by the Supreme Court. The following are the principles to be borne in mind:
(1) Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. In determining this question of fact, the court must consider all the surrounding circumstances.
(2) It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, then it is open to the court to consider such a plea.
(3) Under Section 105 of the Evidence Act, the burden of proof is on the accused, who sets up the plea of self-defence. In the absence of the said proof, it is not possible for the court to presume the truth of the plea of self-defence. The court shall presume the absence of such circumstances. It is for the accused to place necessary material either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution.
(4) Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of selfdefence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record.
(5) The number of injuries is not always a safe criterion for determining who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilise the version of the right of private defence.
(6) A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether

the right of private defence is available to an accused, the entire incident must be examined with care and viewed on its proper setting.
(7) To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to rerasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death.
(8) The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. I.P.C., available only when the circumstances clearly justify it. It should not be allowed to be pleaded or avail as a pretext for a vindictive, aggressive or retributive purpose of offence. It is a right of defence expected to repel unlawful aggression and not as a retaliatory measure. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived.

56. These principles have been laid down in JAMES MARTIN v. STATE OF KERALA (2004 S.C.C.(Cri) 437) and KASHIRAM v. STATE OF M.P. (200 2 S.C.C.(Cri) 68).

57. In the light of the above principles, let us see whether the self-defence has been established at least by preponderance of probability.

58. On going through the entire materials, it has to be stated even at the outset that the plea of self-defence has not been projected properly before the trial Court and the materials also have not been produced by the defence either by eliciting relevant evidence in the cross-examination from the witnesses or by adducing any evidence on behalf of the defence to establish the same.

59. As a matter of fact, in Section 313 Cr.P.C. statement, none of the accused would come forward to state the details as to how the injuries were inflicted on the accused and by whom they were inflicted and how the accused reacted for the said attack and who attacked whom.

60. It is quite strange to see that even though a counter complaint (Ex.P27) has been given by A1 which has been registered in Crime No.2 19/90, when the relevant questions were put to the accused, the accused did not say anything about the same. On the other hand, a mere suggestion was put to P.W.16 Sub Inspector of Police that he obtained signature from A1 in a blank paper on 22.7.1990 at about 11.00 p.m. in the hospital. This suggestion was denied by P.W.16. If it is the case of the defence that the contents of the counter complaint are not true and at the instance of P.W.16, A1 put the signature in a blank paper, then all the more reason, the accused should give the particulars about the details of the occurrence. As a matter of fact, the contents of Ex.P27 has not been challenged while P.W.17 Inspector of Police was examined.

61. It is also argued by the learned counsel for the appellants that after coming to know that the counter complaint has been referred to as 'mistake of fact', A1 filed private complaint against the accused, namely the present witnesses and that case has been tried along with this case. It is also

brought to the notice of this Court that the private complaint ended in acquittal. Admittedly, that acquittal has not been challenged before this Court by the accused. When a definite case of the defence has been projected before the trial Court through the private complaint, there is no reason for non-production of the said complaint before the trial Court and also for the failure to adduce evidence to establish the defence.

62. Section 105 of the Evidence Act provides that the burden of proving the existence of circumstances which would bring the act of the accused alleged to be an offence within the exercise of `right of private defence is on him and the court shall presume the absence of such circumstances. At the same time, it must be borne in mind that the burden on the accused is not so heavy as it is on the prosecution.

63. It is also well settled that though Section 105 of the Evidence Act enacts a rule regarding burden of proof, but it does not follow that the plea of private defence should be specifically taken. A plea of self-defence can be taken by introducing such plea in the crossexamination of prosecution witnesses or in the statement of the accused persons recorded under Section 313 Cr.P.C. or by adducing defence evidence. Even if the plea is not introduced in any one of these three modes, still it can be raised during the course of submissions by relying on the probabilities and circumstances obtained in the case.

64. Section 96 I.P.C. provides that nothing is an offence which is done in the exercise of the right of private defence. Under Section 97 every person has a right, subject to the restrictions contained in Section 99, to defend his own body and the body of another person, against any offence affecting human body. Under Section 99 the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. When the apprehension of danger has ceased and yet a person continues his attack, he exceeds the right of private defence.

65. For finding out the truth whether the accused acted in the exercise of their private defence, there must be some material in the evidence adduced by the prosecution or in the evidence adduced by the defence. In this case, except to state that the accused also sustained injuries in the course of same transaction, there is no other material for this Court to draw the conclusion that they acted in the exercise of self-defence.

66. A suggestion was put to P.w.1 to the effect that A1 who was present near the tea shop was abused by P.W.2 Elumalai, P.W.3 Paramasivam and P.W.10 Chandran, A2 questioned them and at that juncture, P.W.2, P.W.3 and P.W.10 took the soda bottles from the tea shop of P.W.4 Vedachalam and threw at them and thereupon, the deceased Krishnan and Shanmugam and Rajendran attacked A1 with knife and one Chellappan caught hold of A3 Thirunavukarasu. This suggestion was denied by P.W.1. Admittedly, the said suggestion has not been put to P.W.2, P.W.3 and P.W.10, the other injured persons.

67. As a matter of fact, a different suggestion has been put to P.W.1 7, the Inspector of Police to the effect that the deceased 1 and 2 attacked all the

accused and since both of them died, a false case has been foisted against them. It is also suggested that A1 and A2 were attacked and at that time, the deceased sustained injuries while they were prevented. This suggestion has been denied. Thus, it is clear that there is no material to show as to how and under what circumstances, they were attacked and in the exercise of the right of selfdefence, they attacked whom. On the other hand, the prosecution version is consistent on the fact that both the deceased 1 and 2 were attacked by A1 to A3 and when the witnesses came near the deceased, they were attacked by A4.

68. Therefore, we are constrained to hold that there is no material whatsoever to establish the plea of self-defence even on the preponderance of probability. On the other hand, the prosecution case has been proved beyond reasonable doubt by the injured witnesses corroborated by the medical evidence. Therefore, this contention regarding the plea of self-defence is rejected.

69. All the accused persons have been convicted for the offences under Sections 147, 148, 302 read with 149 and 324 I.P.c. The circumstances found in the available materials would not show that all the persons formed themselves into unlawful assembly armed with weapons. As a matter of fact, it is the evidence of the eye witnesses that A1 took M.O.6 knife from the tea shop and then stabbed the first deceased. Similarly, A4 took M.O.7 another knife from the tea shop and stabbed on the injured eye witnesses. P.W.4 would state that M.O.6 and M.O.7 belonged to him. Therefore, there is no mat erial to conclude that they are liable to be convicted for the offences under Sections 147 and 148 I.P.C. Similarly, all the other accused cannot be convicted for these offences.
70. Though there is evidence regarding murder as against A1 and A2 in respect of the first deceased and A1 and A3 in respect of the second deceased, there is no sufficient material to show that all the accused have committed the offence under Section 302 read with 149 I.P.C.

71. Therefore, the accused persons are liable to be convicted for their individual acts. Accordingly, the conviction imposed upon A1 and A2 for the offence under Section 302 read with 34 I.P.C. for having caused the death of the first deceased is confirmed. Similarly, the conviction imposed upon A1 and A3 for the offence under Section 302 read with 34 I.P.C. for having caused the death of the second deceased is also confirmed. As indicated above, there is no acceptable material to show that A5 and A6 attacked any of the witnesses. A4 alone is liable to be convicted for the act of causing injuries on P.W.2, P.W.3 and P.W.10. Accordingly, A4 alone is convicted for the offence under Section 324 I.P.C. in respect of three counts and A5 and A6 are acquitted.

72. To sum up:
i) The conviction and sentence imposed upon A1 (two counts)A2 and A3 for the offence under Section 302 read with 34 I.P.C. is confirmed.

ii) The conviction and sentence imposed upon A4 under Section 324 I.P.C. is confirmed.

iii) The conviction and sentence imposed upon A1 to A6 for the offences under Sections 147, 148 and 302 read with 149 I.P.C. is set aside they are acquitted of these charges.
iv) The conviction and sentence imposed upon A1 to A3, A5 and A6 for the offence under Section 324 I.P.C. is set aside and they are acquitted of this charge.
v) With the above observations, the appeal is partly allowed.

(M.K.V.J.) (S.K.K.J.)
23-06-2004
Index : Yes
Internet: Yes
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To
1) The Principal Sessions Judge, Chengleput.
2) The Judicial Magistrate No.I, Chengleput.
3) -do through the Chief Judicial Magistrate, Chengleput.
4) The II Metropolitan Magistrate, Chennai.
5) -do through the Chief Metropolitan Magistrate, Chennai.
6) The Superintendent, Central Prison, Vellore.
7) The Superintendent, Central Prison, Cuddalore.
8) The Public Prosecutor, High Court, Madras.
9) The District Collector, Chengleput.
10) The Director General of Police, Chennai.
11) The Inspector of Police, Salavakkam, Chengleput Dist.